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*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL  
DIVERSITY,

Plaintiff,

v.

U.S. BUREAU OF LAND  
MANAGEMENT,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1. In this action, the Center for Biological Diversity (“Center”), a conservation organization that works to protect native wildlife species in their natural habitats, challenges the failure of the Bureau of Land Management (“BLM”) to provide *inter alia* any and all records mentioning or including the Resource Management Plan (“RMP”) for the Southern Diablo Range and Central Coast of California and the Central Coast Field Office Draft Resource Management Plan Amendment and EIS (environmental impact statement) for Oil and Gas Leasing and Development (“Amendment and EIS”) dated or created from July 17, 2014 until the date of the search, including but not limited to records generated in connection with (1) the preparation of the Amendment and EIS and (2) all proposed amendments to the RMP.

2. The agency’s refusal *inter alia* to provide these records violates the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”) and offends its purpose of government transparency.

3. BLM is unlawfully withholding public records, which the Center requested pursuant to FOIA, by failing to conduct an adequate search for responsive records and by failing to provide the Center with responsive records, for which there are no applicable FOIA exemptions. Prompt access to these records is necessary to fulfill FOIA’s purpose, thus the Center seeks declaratory relief establishing that BLM violated FOIA, or alternatively, the Administrative Procedure Act (“APA”); the Center also seeks injunctive relief directing BLM to conduct searches for responsive records and to provide the Center with all responsive records without any further delay.

## JURISDICTION AND VENUE ASSIGNMENT

4. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

5. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), because a portion of the responsive records may be found in this district.

6. Assignment to the San Jose Division is appropriate because the BLM’s Central Coast Field Office, the BLM office of which the Center made its request and at which a portion of

1 the responsive records may be found, is located in Monterey County.

2 7. Declaratory relief is appropriate under 28 U.S.C. § 2201.

3 8. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

#### 4 **PARTIES**

5 9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national non-profit  
6 conservation organization with offices throughout the United States. The Center has more than  
7 69,500 members. The Center and its members are harmed by BLM's violations of FOIA, or,  
8 alternatively, the APA, as such violations preclude the Center from gaining a full understanding of  
9 the communication records, correspondence records, and meeting records of BLM's Central Coast  
10 Field Office as they relate to the requested records. BLM's failure to comply with FOIA impairs the  
11 Center's ability to provide full, accurate and current information to the public on a matter of public  
12 interest. Absent this information, the Center is hampered in its ability to advance its mission to  
13 protect native species and their habitat.

14 10. Defendant BUREAU OF LAND MANAGEMENT is an agency of the United States  
15 government within the U.S. Department of the Interior. BLM is responsible for managing public  
16 lands, and BLM's mission is to sustain the health, diversity, and productivity of public lands for the  
17 use and enjoyment of present and future generations. BLM is in possession and control of the  
18 records that the Center seeks, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f) and is  
19 responsible for fulfilling the Center's FOIA Request. BLM is the federal agency responsible for  
20 applying and implementing the federal laws and regulations at issue in this complaint.

#### 21 **STATUTORY BACKGROUND**

22 11. FOIA's basic purpose is for government transparency. It establishes the public's  
23 right to access all federal agency records unless such records may be withheld pursuant to one of  
24 nine narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

25 12. Within 20 working days of receiving a FOIA request, an agency must determine if it  
26 will release requested records and must notify the requester of its determination and the reasons  
27 therefor, the right to seek assistance from the FOIA Public Liaison, and the right to appeal an  
28 adverse agency determination. *Id.* § 552(a)(6)(A)(i).

1           13.     An agency may toll the 20-working-day deadline to seek additional information or  
2 clarification from a requester, but that tolling period ends when the agency receives such  
3 information or clarification. *Id.* § 552(a)(6)(A)(ii).

4           14.     Only in “unusual circumstances” may an agency extend the time to make a final  
5 determination by no more than 10 additional working days, but it must provide written notice to the  
6 requester setting forth the unusual circumstances for the extension and “the date on which a  
7 determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i). If the agency provides written  
8 notice that the request cannot be processed with the specified time limit, the agency shall provide  
9 “an opportunity to limit the scope of the request so that it may be processed within” the statutory  
10 time limit or “an opportunity to arrange with the agency an alternative time frame for processing the  
11 request or a modified request” and shall make available its FOIA Public Liaison to “assist in the  
12 resolution of any disputes between the requester and the agency.” *Id.* § 552(a)(6)(B)(ii).

13           15.     FOIA requires each agency to search for records in a manner that is reasonably  
14 calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

15           16.     FOIA requires federal agencies to promptly disclose requested records. *Id.*  
16 § 552(a)(3)(A), (a)(6)(C)(i).

17           17.     In certain limited instances, an agency may withhold records or portions of records  
18 pursuant to nine specific exemptions. *Id.* § 552(b). These exemptions must be narrowly construed in  
19 light of FOIA’s dominant objective of disclosure, not secrecy.

20           18.     FOIA places the burden on the agency to prove that it may withhold responsive  
21 records or portions of records from a requester. *Id.* § 552(a)(4)(B).

22           19.     FOIA provides this Court jurisdiction “to enjoin the agency from withholding  
23 agency records and to order the production of any agency records improperly withheld from the  
24 complainant.” *Id.* § 552(a)(4)(B).

25           20.     Alternatively, an agency’s response to a FOIA request is subject to judicial review  
26 under the APA, which confers a right of judicial review on any person who is adversely affected by  
27 agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is  
28 unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any

agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

### FACTUAL BACKGROUND

#### **BLM FOIA Request: Records Held by BLM Central Coast Office**

21. On August 13, 2018, the Center submitted to BLM’s Central Coast Field Office a FOIA request seeking “any and all records” (hereinafter the “FOIA Request”) “[f]rom July 17, 2014 to the date BLM conducts [its] search mentioning or including the RMP for the Southern Diablo Range and Central Coast of California and the Central Coast Field Office Draft Resource Management Plan Amendment and EIS for Oil and Gas Leasing and Development” generated in connection with (1) “The preparation of Amendment and EIS”; and (2) “All proposed amendment(s) to the RMP.”

22. On August 20, 2018, BLM assigned the FOIA Request a tracking number, BLM-2018-01178, and advised the Center that it expected to make a determination by September 24, 2018.

23. BLM did not make a determination, or otherwise respond to the Center’s request.

24. On September 26, 2018, the Center notified BLM that the agency had violated FOIA’s 20-working day deadline, 5 U.S.C. § 552(a)(6)(A)(i), and requested an estimated date of completion of a determination on the FOIA Request. *Id.* § 522(a)(7)(B).

25. BLM did not respond to the Center’s September 26, 2018 correspondence.

26. On November 8, 2018 the Center notified BLM again that the agency had violated FOIA’s 20-working day deadline, 5 U.S.C. § 552(a)(6)(A)(i), and offered to assist in any way “to facilitate the BLM’s prompt release of the requested records.”

27. BLM never responded to this notification and offer.

28. As of the date of this complaint, BLM has not responded to the Center’s FOIA Request of August 13, 2018, and has not provided any responsive records to the Center.

29. BLM has not provided the Center with a lawful determination that describes the scope of the records it intends to produce or withhold and the reasons for withholding any records, or informed the Center of its right to appeal.

1 30. Because of BLM's delay, the Center is deemed to have exhausted its administrative  
2 remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

3 31. BLM has no lawful basis under FOIA for its delay or for withholding the records  
4 that the Center requested in its August 13, 2018 FOIA Request.

5 32. The Center has been required to expend resources to prosecute this action.

6  
7 **FIRST CLAIM FOR RELIEF**  
8 **[Violation of the Freedom of Information Act]**

9 **Failure to Make a Determination on the FOIA Request**

10 33. The Center re-alleges and incorporates by reference the allegations made in all  
11 preceding paragraphs.

12 34. BLM violated FOIA by failing to make a determination on the Center's FOIA  
13 Request within 20-working days or respond in any manner to the Center's FOIA request made on  
14 August 13, 2018.

15 35. The Center has a statutory right to receive a lawful determination from BLM, as well  
16 as to promptly receive the underlying records it seeks.

17 36. BLM has still not made a determination on the Center's FOIA Request that describes  
18 the scope of the records it intends to produce or withhold and the reasons for withholding any  
19 records, or informed the Center that it may appeal any specific adverse determination within the  
20 relevant time periods in 5 U.S.C. § 552(a)(6)(A)(i) or 5 U.S.C. § 552(a)(6)(B). *See also* 5 U.S.C. §  
21 552(a)(7).

22 37. Based on the nature of the Center's organizational activities, it will undoubtedly  
23 continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

24 38. The Center's organizational activities will be adversely affected if BLM continues to  
25 violate FOIA's requirement to provide a lawful determination on the Center's FOIA request.

26 39. Unless enjoined and made subject to a declaration of the Center's legal rights by this  
27 Court, BLM will continue to violate the Center's rights to receive public records under FOIA.  
28

**SECOND CLAIM FOR RELIEF**  
**[Violation of the Freedom of Information Act]**

**Failure to Conduct an Adequate Search for Records Responsive to the FOIA Request**

40. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

41. The Center has a statutory right to have BLM process its FOIA Request in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

42. BLM violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to the Center's FOIA Request dated August 13, 2018.

43. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

44. The Center's organizational activities will be adversely affected if BLM continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA Request.

45. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, BLM will continue to violate the Center's rights to receive public records under FOIA.

**THIRD CLAIM FOR RELIEF**  
**[Violation of the Freedom of Information Act]**

**Failure to Promptly Disclose Records Responsive to FOIA Request**

46. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

47. BLM violated FOIA, 5 U.S.C. § 552(a)(4)(B), and regulations, by refusing to promptly disclose records that are responsive to the Center's FOIA Request dated August 13, 2018.

48. None of FOIA's statutory exemptions apply to the records that the Center seeks.

49. The Center has a statutory right to the records it seeks.

50. Based on the nature of the Center's organizational activities, the Center will undoubtedly continue to employ FOIA's provisions in record requests to BLM in the foreseeable

1 future.

2 51. The Center's organizational activities will be adversely affected if BLM continues to  
3 violate FOIA's disclosure provisions as it has in this case.

4 52. Unless enjoined and made subject to a declaration of the Center's legal rights by this  
5 Court, BLM will continue to violate the Center's rights to receive public records under FOIA.

6 **FOURTH CLAIM FOR RELIEF**  
7 **[Violation of the Freedom of Information Act]**

8 **Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records**

9 53. The Center re-alleges and incorporates by reference the allegations made in all  
10 preceding paragraphs.

11 54. The Center has a statutory right to any reasonably segregable portion of a record that  
12 contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

13 55. BLM violated the Center's rights in this regard by unlawfully withholding  
14 reasonably segregable portions of any lawfully exempt records that are responsive to the Center's  
15 FOIA Request of August 13, 2018.

16 56. Based on the nature of the Center's organizational activities, it will undoubtedly  
17 continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

18 57. The Center's organizational activities will be adversely affected if BLM is allowed  
19 to continue violating FOIA's disclosure provisions as it has in this case.

20 58. Unless enjoined and made subject to a declaration of the Center's legal rights by this  
21 Court, BLM will continue to violate the Center's rights to receive public records under FOIA.

22 **FIFTH CLAIM FOR RELIEF**  
23 **[Violation of the Administrative Procedure Act]**  
24 **(In the Alternative to the First through Fourth Claims)**

25 **Unlawfully Withholding or Unreasonably Delaying Actions That FOIA Requires**

26 59. The Center re-alleges and incorporates by reference the allegations made in all  
27 preceding paragraphs.

28 60. BLM unlawfully withheld agency action by failing to comply with the mandates of



FOIA consequent to its failure and refusal to: (1) provide a timely determination on the Center's FOIA Request; (2) conduct an adequate search for records that are responsive to the Center's FOIA Request; (3) promptly disclose records that are responsive to the Center's FOIA Request; and (4) provide the Center with reasonably segregable portions of responsive records in the event that records may be subject to an exemption. BLM's failures constitute agency action that is unlawfully withheld, and therefore, this action is actionable pursuant to the APA, 5 U.S.C. § 706(1).

61. Alternatively, BLM unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide a timely determination on the Center's FOIA Request; (2) conduct an adequate search for records that are responsive to the Center's FOIA Request; (3) promptly disclose records that are responsive to the Center's FOIA Request; and (4) provide the Center with reasonably segregable portions of responsive records in the event that records may be subject to an exemption. BLM's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

62. As alleged above, BLM's failure to comply with the mandates of FOIA has injured the Center's interest in public oversight of governmental operations and is a violation of its statutory duties under the APA.

63. The Center has no other adequate remedy at law to redress the violations noted above.

64. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

**SIXTH CLAIM FOR RELIEF**  
**[Violation of the Administrative Procedure Act]**  
**(In the Alternative to the First through Fifth Claims)**

**Violations of FOIA Are Arbitrary, Capricious, An Abuse of Discretion, or Otherwise Not in Accordance with Law**

65. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

66. BLM violated FOIA's statutory mandates due to its failure and refusal to: (1) provide a timely determination on the Center's FOIA Request; (2) conduct an adequate search for records that are responsive to the Center's FOIA Request; (3) promptly disclose records that are

responsive to the Center's FOIA Request; and (4) provide the Center with reasonably segregable portions of responsive records in the event that records may be subject to an exemption. By repeatedly violating FOIA's statutory mandates, BLM's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore are actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

67. As alleged above, BLM's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is a violation of the agency's statutory duties under the APA.

68. The Center has no other adequate remedy at law to redress the violations noted above.

69. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

A. Order Defendant to provide lawful determinations on Plaintiff's FOIA Request as required by FOIA by a date certain;

B. Order Defendant to conduct a search reasonably calculated to locate all records responsive to Plaintiff's FOIA Request, with the cut-off date for such search being the date the search is conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action;

C. Declare that Defendant's failures to undertake a search and to promptly disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Request, as alleged above, are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), or in the alternative, are agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2);

D. Declare that Defendant's failure to timely make a determination on Plaintiff's FOIA Request is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii), or in the

- 1 alternative, is agency action that has been unlawfully withheld or unreasonably delayed,  
2 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance  
3 with law, 5 U.S.C. § 706(2)(A);
- 4 E. Declare that Defendant's failure to provide Plaintiff with reasonably segregable portions  
5 of records which may be lawfully subject to a FOIA exemption, as alleged above, is  
6 unlawful under FOIA, 5 U.S.C. § 552(a)(7)(B), or in the alternative, is agency action  
7 that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is  
8 arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. §  
9 706(2);
- 10 F. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. §  
11 552(a)(4)(E) or 28 U.S.C. § 2412;
- 12 G. Grant such other and further relief as the Court may deem just and proper.
- 13

14 DATED: March 28, 2019

Respectfully submitted,

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